

SOLICITOR

AO 120 (Rev. 3/04)

OCT - 6 2008

| | |
|---|---|
| TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 | REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK |
|---|---|

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
filed in the U.S. District Court Western District of Texas-SA on the following ☐ Patents or ☒ Trademarks:

| | | |
|--|--------------------------------|---|
| DOCKET NO. SA-08-CA-812-FB | DATE FILED 10/2/2008 | U.S. DISTRICT COURT Western District of Texas-SA |
| PLAINTIFF Microsoft Corporation, a Washington Corporation | | DEFENDANT Marques L. White d/b/a "ques19" |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK |
| 1 SEE ATTACHED | | |
| 2 <i>q. Tm. pgs. 6-7</i> | | |
| 3 | | |
| 4 | | |
| 5 | | |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

| | | | | | |
|----------------------------|--------------------------------|------------------------------------|---------------------------------|-------------------------------------|---|
| DATE INCLUDED | INCLUDED BY | <input type="checkbox"/> Amendment | <input type="checkbox"/> Answer | <input type="checkbox"/> Cross Bill | <input type="checkbox"/> Other Pleading |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK | HOLDER OF PATENT OR TRADEMARK | | | |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |

In the above—entitled case, the following decision has been rendered or judgement issued:

| |
|--------------------|
| DECISION/JUDGEMENT |
|--------------------|

| | | |
|-------------------------------------|--|-------------------|
| CLERK WILLIAM G. PUTNICKI | (BY) DEPUTY CLERK <i>Kim Ramsey</i> | DATE 10/2/2008 |
|-------------------------------------|--|-------------------|

Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2008 OCT -2 A 11:42

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY

DEPUTY

MICROSOFT CORPORATION,
a Washington corporation,

Plaintiff,

v.

MARQUES L. WHITE d/b/a "ques19",

Defendant.

Case No: _____

SA08CA0812

FB

ORIGINAL COMPLAINT

Introduction

1. This is an action by Microsoft Corporation ("Microsoft") to recover damages arising from infringement of Microsoft's copyrights and trademarks by defendant Marques L. White d/b/a ques19 ("Defendant"), and to enjoin Defendant's future infringement. Defendant is actively engaged in pirating, trafficking and/or otherwise distributing counterfeit/infringing Microsoft software. In addition to damages and injunctive relief, Microsoft seeks an accounting, the imposition of a constructive trust upon Defendant's illegal profits, and other relief.

The Parties

2. Plaintiff Microsoft is a Washington corporation with its principal place of business in Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.

3. Upon information and belief, Defendant resides in San Antonio, Texas, and has done business as, among other things, "ques19." Using his own name and the alias "ques19," Defendant distributes computer software on the Internet and/or through various other means.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant operates and does business in the District and because a substantial part of the events giving rise to Microsoft's claims occurred in this District. Venue is also proper in this District under 28 U.S.C. § 1400 inasmuch as Defendant may be found in this District.

Facts Common to All Claims

6. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on magnetic diskettes and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end-user license agreements ("EULAs"), Certificates of Authenticity ("COAs"), and other components. Microsoft COAs are special certificates or labeling components that are distributed with Microsoft software programs in order to help end-users verify whether they have genuine Microsoft software. COAs are manufactured with holograms, heat sensitive threads and other security features that make unauthorized duplication difficult.

7. Microsoft distributes unique Product Keys to its licensees. Each Product Key consists of a 25-character alphanumeric code arranged in five groups of five characters each. Product Keys are needed to unlock certain software programs and enable their use. Because a CD-ROM containing Microsoft's copyrighted software is capable of being installed on a potentially unlimited number of computers, Microsoft relies on the unique Product Keys, and special installation and in some cases activation features within the software, to prevent or at least restrict the installation and use of its software by unauthorized third parties.

8. Microsoft and its partners distribute some software and other components to Original Equipment Manufacturers ("OEMs") and System Builder ("SB") customers. OEMs and SBs typically install Microsoft software on a specified number of computers manufactured by them, and subject to other conditions set forth in their License Agreements with Microsoft.

9. Microsoft Office 2007 Enterprise: Microsoft Office 2007 Enterprise ("Microsoft Office 2007") is a complete suite of productivity and database software that helps users save time and stay organized. Microsoft holds a valid copyright in Microsoft Office 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. Microsoft Office 2007 is subsumed by the Copyright Registration for Microsoft Office Ultimate 2007. A true and correct copy of the Registration Certificate for Microsoft Office Ultimate 2007, bearing number TX 6-504-552, is attached as Exhibit 1 and is incorporated by reference. Microsoft Office 2007 includes the following popular programs:

- a) Microsoft Office Access 2007, a program which includes predefined database tracking applications and the Office Fluent user interface that helps users create and manage databases to track their business information. Microsoft holds a valid copyright in Microsoft Office Access 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Access 2007, bearing number TX 6-524-395, is attached as Exhibit 2 and is incorporated by reference.
- b) Microsoft Office Excel 2007, a program offering new tools for filtering, sorting, and visualizing information to make it easier for users to get an insight into their business. Microsoft holds a valid copyright in Microsoft Office Excel 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the

Copyright Registration Certificate for Microsoft Office Excel 2007, bearing number TX 6-524-399, is attached as Exhibit 3 and is incorporated by reference.

c) Microsoft Office Outlook 2007, a program with Business Contact Manager including a new To-Do Bar and Outlook task integration on the calendar to help users manage time and tasks more effectively. This program also includes Instant Search capabilities and a Color Category feature to help users locate, prioritize, and act upon their growing volume of e-mail. Microsoft holds a valid copyright in Microsoft Office Outlook 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Outlook 2007, bearing number TX 6-524-393, is attached as Exhibit 4 and is incorporated by reference.

d) Microsoft Office PowerPoint 2007, a program which makes it quicker and easier for users to create dynamic presentations with an extensive library of customizable themes and slide layouts. Microsoft holds a valid copyright in Microsoft Office PowerPoint 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office PowerPoint 2007, bearing number TX 6-524-389, is attached as Exhibit 5 and is incorporated by reference.

e) Microsoft Office Publisher 2007, a program which helps users create and publish a wide range of marketing publications for print, e-mail, and the Web using their own brand elements. Microsoft holds a valid copyright in Microsoft Office Publisher 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Publisher 2007, bearing number TX 6-524-388, is attached as Exhibit 6 and is incorporated by reference.

f) Microsoft Office Word 2007, a program which includes enhanced templates and tools to make it easier for users to reuse content, apply professional formatting, and quickly preview changes. Microsoft holds a valid copyright in Microsoft Office Word 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Word 2007, bearing number TX 6-524-398, is attached as Exhibit 7 and is incorporated by reference.

g) Microsoft Office Groove 2007, a collaboration software program that helps teams work together dynamically and effectively, even if team members work for different organizations, work remotely, or work offline. Working in Groove workspaces saves time, increases productivity, and strengthens the quality of team deliverables. Microsoft holds a valid copyright in Microsoft Office Groove 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Groove 2007, bearing number TX 6-524-390, is attached as Exhibit 8 and is incorporated by reference.

h) Microsoft Office InfoPath 2007, is a program which allows users to create and deploy electronic forms solutions to gather information efficiently and reliably. You can also use the InfoPath Forms Services capabilities in Microsoft Office SharePoint Server 2007 to extend your business processes beyond your corporate firewall, delivering forms as Microsoft Office Outlook e-mail messages, Web browser forms, or forms for mobile devices. Microsoft holds a valid copyright in Microsoft Office InfoPath 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office InfoPath 2007, bearing number TX 6-524-392, is attached as Exhibit 9 and is incorporated by reference.

i) Microsoft Office OneNote 2007, is a program which delivers the flexibility to gather and organize text, pictures, digital handwriting, audio and video recordings, and more — all in one digital notebook on your computer. Microsoft holds a valid copyright in Microsoft Office OneNote 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office OneNote 2007, bearing number TX 6-524-396, is attached as Exhibit 10 and is incorporated by reference.

(j) Microsoft Accounting Express 2007, a program that provides a comprehensive set of accounting tools that help manage everyday tasks and grow a business online. Microsoft holds a valid copyright in Accounting Express 2007 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the applicable Copyright Registration Certificate, bearing the number TX 6-624-817, is attached hereto as Exhibit 11 and is incorporated by reference.

10. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register, including, but not limited to:

a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236 and Renewal for computer programs and computer programming services;

b) "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;

c) "POWERPOINT," Trademark Registration No. 1,475,795, for pre-recorded computer programs recorded on magnetic disks;

d) "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for computer programs for use with databases and manuals sold as a unit;

e) PUZZLE PIECE LOGO, Trademark Registration No. 1,982,562 for computer programs and instruction manuals sold as a unit;

f) COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software and manuals sold as a unit therewith;

g) "OUTLOOK," Trademark Registration No. 2,188,125, for computer programs, specifically programs providing enhanced electronic mail and scheduling capabilities and instructional manuals sold as a unit;

h) "GROOVE," Trademark Registration No. 2,830,702 for computer software used to facilitate and coordinate asynchronous interpersonal communications, and related documents and materials;

i) "INFOPATH," Trademark Registration No. 2,890,260, for computer software, namely, software to design, create, edit and publish documents, and related programs; and

j) "ONENOTE," Trademark Registration No. 2,844,710, for computer software for use in note-taking, agendas, reminders, accessing shared documents, and related programs and peripherals.

11. True and correct copies of the Trademark Registrations for Paragraphs 10.a through 10.j are attached hereto as Exhibits 12 through 21 respectively, and are incorporated by reference.

Defendant's Infringement

12. Beginning at a time unknown, Defendant actively engaged in the illegal and unlawful business of trafficking or otherwise distributing counterfeit and infringing Microsoft software.

13. Defendant has advertised and distributed counterfeit and infringing Microsoft software in interstate commerce and on the Internet through, among other means, eBay.com.

14. Microsoft is regularly contacted by customers/individuals who report concerns about the genuineness of purported Microsoft software distributed by unauthorized individuals

and entities over the Internet. Many of those customers/individuals submit the materials they purchase to Microsoft for analysis, to determine whether the materials were counterfeit.

15. In this case, private investigators working for Microsoft made test purchases from Defendant. Specifically, on or about April 14, 2008, investigators purchased a copy of Microsoft Office 2007 Enterprise for \$175. This material was distributed in an authorized fashion. This material was analyzed by Microsoft and determined to be an infringing copy of Microsoft software, copied and distributed via various means without authorization.

16. The aforementioned software was advertised using Microsoft's registered trademarks, including the "MICROSOFT" mark, and other intellectual property of Microsoft.

17. Upon information and belief, Defendant engaged in the aforementioned conduct despite being on notice of its infringing nature.

18. The Defendant's conduct is likely to cause consumers to be confused, mistaken, or deceived about the authenticity of Microsoft products distributed by Defendant. Defendant's wrongful conduct has caused and may continue to cause harm to Microsoft's business reputation and good will.

19. Upon information and belief, Defendant's violations are willful, deliberate, and committed with prior notice and knowledge of Microsoft's copyrights and registered marks. Defendant's wrongful conduct has caused and may continue to cause significant and irreparable harm to Microsoft. Microsoft brings this action to recover damages for the harm it has sustained, to impose a constructive trust upon Defendant's illegal profits and assets purchased with those profits, and to obtain injunctive relief prohibiting Defendant's further violations and infringements.

Claim I

(Copyright Infringement, 17 U.S.C. § 501, et seq.)

20. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 19, inclusive.

21. Microsoft is the sole owner and licensor of Office 2007 and other software and components covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof, and of all corresponding copyrights and Certificates of Registration.

22. Defendant has infringed the copyrights in Microsoft's software, including, but not limited to Office 2007, the software and components referenced in this Complaint and evidenced by Microsoft's copyright registrations attached to this Complaint, and other software and components covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof, by distributing infringing materials in the United States of America, without approval or authorization from Microsoft.

23. Defendant's conduct has been willful within the meaning of the Copyright Act. At a minimum, Defendant has acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

24. As a result of his wrongful conduct, Defendant is liable to Microsoft for copyright infringement. Microsoft has suffered, and will continue to suffer, substantial losses, including, but not limited to, damage to its business reputation and goodwill. Microsoft is entitled to recover damages, which include its losses and all profits Defendant has made as a result of his wrongful conduct, pursuant to 17 U.S.C. § 504(b).

25. Alternatively, Microsoft is entitled to statutory damages pursuant to 17 U.S.C. § 504(c). In addition, because Defendant's infringement has been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced pursuant to 17 U.S.C. § 504(c)(2).

26. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to 17 U.S.C. § 505.

Claim II

(Trademark Infringement, 15 U.S.C. § 1114, et seq.)

27. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 26, inclusive.

28. Defendant's activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Act, including, but not limited to, 15 U.S.C. § 1114(1).

29. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software, products and services of others in the same field or related fields.

30. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify software or services of Microsoft.

31. Defendant's wrongful conduct includes the distribution of counterfeit Microsoft software advertised and identified via Microsoft's registered trademarks and/or service mark. The infringing materials that Defendant has offered, advertised, marketed, installed or distributed are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.

32. Defendant's activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendant is using, advertising, installing, marketing, offering, or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.

33. Defendant used, offered, advertised, marketed, installed, offered or distributed infringing material with the willful and calculated purposes of (a) misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the infringing materials, and (b) trading upon Microsoft's business reputation and goodwill. At a minimum, Defendant acted with willful blindness to and in reckless disregard of Microsoft's registered marks.

34. As a result of his wrongful conduct, Defendant is liable to Microsoft for trademark infringement. Microsoft has suffered, and will continue to suffer, substantial losses, including, but not limited to, damage to its business reputation and goodwill. Microsoft is entitled to recover damages, which include its losses and all profits Defendant has made as a result of his wrongful conduct, pursuant to 15 U.S.C. § 1117(a).

35. Alternatively, Microsoft is entitled to statutory damages pursuant to 15 U.S.C. § 1117(c). In addition, because Defendant's infringement of Microsoft's trademarks and service mark was willful, within the meaning of the Lanham Trademark Act, the award of damages and profits should be trebled pursuant to 15 U.S.C. § 1117(b).

36. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to 15 U.S.C. § 1117.

Claim III

(False Designation of Origin, 15 U.S.C. § 1125, et seq.)

37. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 36, inclusive.

38. Because Microsoft advertises, markets, distributes, and licenses its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from the software or products of others in the same field or related fields.

39. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify software or services of Microsoft.

40. Microsoft uses various marks and branding concepts, including distinctive and aesthetically pleasing displays, logos, icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software programs.

41. Defendant's wrongful conduct includes the use, advertising, marketing, offering, or distribution of Microsoft's marks, name, and/or imitation visual designs.

42. Defendant engaged in such wrongful conduct with the willful purpose of (a) misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the goods and services offered, marketed or distributed in connection with Microsoft's marks, name, and imitation visual designs, and (b) trading upon Microsoft's business reputation and goodwill.

43. Defendant's conduct constitutes (a) false designation of origin, (b) false or misleading description, and (c) false or misleading representation that the software originates from or is authorized by Microsoft, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).

44. Defendant's wrongful conduct is likely to continue unless restrained and enjoined.

45. As a result of Defendant's wrongful conduct, Microsoft has suffered and will continue to suffer substantial losses, including, but not limited to, damage to its business reputation and goodwill.

46. Microsoft is also entitled to recover its attorney's fees and costs of suit pursuant to 15 U.S.C. § 1117.

Claim IV

(Constructive Trust upon Illegal Profits)

47. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 46, inclusive.

48. Defendant's acts and conduct constitute deceptive, fraudulent, and wrongful conduct in the nature of passing off the infringing software or related components as approved or authorized by Microsoft.

49. By virtue of Defendant's wrongful acts and conduct, Defendant has illegally received money and profits that rightfully belong to Microsoft.

50. Microsoft is entitled, pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b), to recover all profits of Defendant that are attributable to his acts of infringement or violations thereof.

51. Upon information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property, and personal property (including motor vehicles) that can be located and traced.

52. Defendant holds the money and profits he has illegally received as constructive trustee for the benefit of Microsoft.

Claim V

(Accounting)

53. Microsoft repeats and incorporates by this reference each and every allegation as set forth in paragraphs 1 through 52, inclusive.

54. Microsoft is entitled, pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b), to recover all profits of Defendant that are attributable to his acts of infringement or violations thereof.

55. The amount of money due from Defendant to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendant of the precise number of units of infringing material offered for distribution and distributed by Defendant.

Claim VI

(Injunctive Relief)

56. Microsoft repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 55, inclusive.

57. Microsoft is entitled to injunctive relief enjoining Defendant's wrongful conduct pursuant to 17 U.S.C. § 502, 15 U.S.C. §§ 1116(i), and 1125(c).

58. Microsoft is entitled to an order impounding all counterfeit and/or infringing articles pursuant to 17 U.S.C. §§ 503, 509(a), and 15 U.S.C. § 1116, subsections (a) and (d)(1)(A).

59. Microsoft is also entitled to an order impounding and/or destroying all imitation visual designs being used, offered, advertised, marketed, installed or distributed by Defendant pursuant to 15 U.S.C. §§ 1125(c), 1118.

Prayer for Relief

WHEREFORE, Microsoft respectfully requests judgment as follows:

1. That the Court enter a judgment against Defendant finding that Defendant has:
 - a) willfully infringed Microsoft's rights in the following federally registered copyrights, in violation of 17 U.S.C. § 501:
 - i) TX 6-504-552 ("Office Ultimate 2007");
 - ii) TX 6-524-395 ("Access 2007");
 - iii) TX 6-524-399 ("Office Excel 2007");
 - iv) TX 6-524-393 ("Office Outlook 2007");
 - v) TX 6-524-389 ("Office PowerPoint 2007");
 - vi) TX 6-524-388 ("Office Publisher 2007");
 - vii) TX 6-524-398 ("Office Word 2007");
 - viii) TX 6-524-390 ("Office Groove 2007");
 - ix) TX 6-524-392 ("Office InfoPath 2007");
 - x) TX 6-524-396 ("Office OneNote 2007"); and
 - xi) TX 6-624-817 ("Accounting Express").
 - b) willfully infringed Microsoft's rights in its federally registered trademarks and service mark, in violation of 15 U.S.C. § 1114;

c) committed and/or are committing acts of false designation of origin, false or misleading description of fact, and false or misleading representation against Microsoft, in violation of 15 U.S.C. § 1125(a); and

d) otherwise injured the business reputation and business of Microsoft by the acts and conduct set forth in this Complaint.

2. That the Court issue permanent injunctive relief against Defendant, and that Defendant, his agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with him, be enjoined and restrained from:

a) imitating, copying, or making any other infringing use or infringing distribution of the software and/or materials now or hereafter protected by the following copyright Certificates Registration Nos.:

- i) TX 6-504-552 ("Office Ultimate 2007");
- ii) TX 6-524-395 ("Access 2007");
- iii) TX 6-524-399 ("Office Excel 2007");
- iv) TX 6-524-393 ("Office Outlook 2007");
- v) TX 6-524-389 ("Office PowerPoint 2007");
- vi) TX 6-524-388 ("Office Publisher 2007");
- vii) TX 6-524-398 ("Office Word 2007");
- viii) TX 6-524-390 ("Office Groove 2007");
- ix) TX 6-524-392 ("Office InfoPath 2007");
- x) TX 6-524-396 ("Office OneNote 2007"); and
- xi) TX 6-624-817 ("Accounting Express").
- xii) Any other items or works now or hereafter protected by any

Microsoft copyright.

b) imitating, copying, or making any other infringing use or infringing distribution of the software and/or materials now or hereafter protected by Microsoft's

registered trademarks and service mark, including, but not limited to, the following

Trademark Registration Nos.:

- i) 1,200,236 ("MICROSOFT");
- ii) 1,256,083 ("MICROSOFT");
- iii) 1,475,795 ("POWERPOINT");
- iv) 1,741,086 ("MICROSOFT ACCESS");
- v) 1,982,562 (PUZZLE PIECE LOGO);
- vi) 2,744,843 (COLORED FLAG DESIGN);
- vii) 2,188,125 ("OUTLOOK");
- viii) 2,830,702 ("GROOVE");
- ix) 2,890,260 ("INFOPATH");
- x) 2,844,710 ("ONENOTE"); and
- xi) Any other items or works now or hereafter protected by any

Microsoft trademark;

c) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any software, component, or thing bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered Trademarks, Service Mark or Copyright Registration Numbers, including, but not limited to, those listed in Sections 2.a and 2.b above;

d) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered Trademarks, Service Mark, or Copyright Registration Numbers including, but not limited to, those listed in Sections 2.a and 2.b above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software program, component, and/or item not authorized or licensed by Microsoft;

e) using any false designation of origin or false or misleading description or false or misleading representation that can or is likely to lead the trade or public erroneously to believe that any software program, component, or item has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact;

f) using reproductions, counterfeits, copies or colorable imitations of Microsoft's copyrighted and trademark protected software and other materials in the distribution, offering for distribution, circulating, sale, offering for sale, advertising, importing, promoting, or displaying of any merchandise not authorized or licensed by Microsoft;

g) using the names, logos, or other variations thereof of any of Microsoft's copyright and/or trademark-protected software in any of Defendant's trade or corporate names;

h) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights;

i) trafficking, distributing or intending to distribute any counterfeit or illicit Microsoft COAs or COA Labels; and

j) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs a through i above.

3. That the Court enter an order, pursuant to 15 U.S.C. § 1116(d)(1)(A), 17 U.S.C. §§ 503(a) and 509(a), 28 U.S.C. § 1651(a), and/or other applicable law, impounding all counterfeit and infringing Microsoft software and/or materials bearing any of Microsoft's trademarks or service mark, counterfeit or illicit Microsoft COAs or COA Labels, or any Microsoft documentation or packaging, and any related items, including business records, that

are in Defendant's possession or under his control (including Defendant's agents), and ordering the remedial destruction of all impounded items;

4. That the Court enter an order, pursuant 15 U.S.C. § 1117(a) and 17 U.S.C. § 504(b), declaring that Defendant hold in trust, as constructive trustee for the benefit of Microsoft, all "profits" received by him from his distribution or sale of counterfeit and infringing Microsoft software and/or materials, and issue temporary, preliminary and permanent injunctive relief enjoining and restraining Defendant and his agents from transferring, concealing or dissipating all profits and assets acquired in whole or in part with those profits;

5. That the Court enter an order requiring Defendant to provide Microsoft a full and complete accounting of all profits received by him from his distribution or sale of counterfeit and infringing Microsoft software and/or materials, and of any other amounts due and owing to Microsoft as a result of his illegal activities;

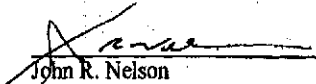
6. That the Court order Defendant to pay Microsoft's general, special, actual, and statutory damages as follows:

a) Microsoft's damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) or, alternatively, enhanced statutory damages pursuant to 17 U.S.C. § 504(c), for Defendant's willful infringement of Microsoft's copyrights;

b) Microsoft's damages and Defendant's profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendant's willful violation of Microsoft's registered trademarks and service mark, or alternatively, enhanced statutory damages pursuant to 15 U.S.C. § 1117(c) for Defendant's willful circulation of Microsoft's registered trademarks and service marks;

7. That the Court order Defendant to pay to Microsoft the costs of this action and the reasonable attorney's fees incurred by Microsoft in prosecuting this action; and

8. That the Court grant Microsoft such other and additional relief as is just and proper.


John R. Nelson
Texas Bar No. 00797144
Federal ID No. 32683
LOCKE LORD BISSELL & LIDDELL LLP
100 Congress Avenue, Suite 300
Austin, Texas 78701
(512) 305-4868 Direct
(512) 305-4800 Fax
jnelson@lockelord.com

Gerald C. Pia, Jr.
Brian C. Roche
ROCHE PIA LLC
Two Corporate Dr., Suite 234
Shelton, Connecticut 06484
(203) 944-0235
gpia@rochepia.com
broche@rochepia.com
Of Counsel

Attorneys for Plaintiff Microsoft Corporation